Exhibit 3

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

MICHAEL P. & SHELLIE GILMOR, et al., Plaintiffs, v. PREFERRED CREDIT CORPORATION, et al., Defendants.	)	Case No. 4:10-cv-0189-ODS

SOVEREIGN BANK'S REPLY IN SUPPORT OF
MOTION TO DISMISS BASED ON HOLA PREEMPTION

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

MICHAEL P. & SHELLIE GILMOR, et al.,	)	
	)	
Plaintiffs,	)	Case No. 4:10-cv-0189-ODS
	)	
v.	)	
	)	
PREFERRED CREDIT CORPORATION, et al.,	)	
	)	
Defendants.	)	

SOVEREIGN BANK'S REPLY IN SUPPORT OF
MOTION TO DISMISS BASED ON HOLA PREEMPTION

In their opposition, Plaintiffs do not dispute that the Home Owners' Loan Act ("HOLA") and the regulations promulgated by the Office of Thrift Supervision ("OTS") "occupy the field" concerning the operations of savings associations, including lending regulation. Nor do they dispute that their allegations fall within the scope of the relevant regulations found at 12 C.F.R. § 545.2 and § 560.2. Plaintiffs argue (mistakenly) that preemption under the HOLA and OTS regulations only applies where the savings association made the loans at issue. In short, Plaintiffs seek to limit the preempted field of operations to direct lending. As discussed below, Plaintiffs' argument is without merit and should be rejected because the preemptive regulations expressly reach all of the operations of savings associations, including the purchase and servicing of mortgage loans. Controlling law compels dismissal of Plaintiffs' claims against Sovereign Bank ("Sovereign") because they fall squarely within 12 C.F.R. § 545.2 and § 560.2(b) and, therefore, are preempted by the HOLA and OTS regulations.[1]

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1 Sovereign also has moved to dismiss Plaintiffs' Complaint because they lack standing to sue Sovereign as Sovereign did not purchase, hold or service any of the Named Plaintiffs' loans.

I. Plaintiffs' Complaint Should Be Dismissed As To Sovereign Because The HOLA And OTS Regulations Preempt The Field Of Operations For Savings Associations Such As Sovereign.

A. Congress And The OTS Preempted The Field of Operations, Including Lending Regulations, For Savings Associations.

Congress has the power to preempt state laws. U.S. Const. art. VI, cl. 2. By statute, Congress required the OTS (formerly the Federal Home Loan Bank and Board ("FHLBB")) to provide for the organization, incorporation, examination, *operation*, and regulation of federal savings associations, "giving primary consideration of the best practices of thrift institutions in the United States." HOLA § 5(a), 12 U.S.C. § 1464(a) (2006). *See also* HOLA § 4(a), 12 U.S.C. § 1463(a). The U.S. Supreme Court has ruled that section 5(a) "gave the [OTS] plenary authority to issue regulations governing federal savings and loans." *Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 160 (1982). Indeed, the Court found that the "broad language of 5(a) expresses no limits on the [OTS's] authority" to prescribe relevant regulations. *Id.* at 161.

Pursuant to "this authorization, [the OTS] has promulgated regulations governing 'the powers and operations of every Federal savings and loan association from its cradle to corporate grave.'" *de la Cuesta*, 458 U.S. at 145 (internal citations omitted). *Accord Conference of Fed'l Sav. & Loan Ass'ns v. Stein*, 604 F.2d 1256, 1260 (9th Cir. 1979), *aff'd per curiam*, 445 U.S. 921 (1980); *Community Title Co. v. Roosevelt Fed'l Sav. & Loan Ass'n*, 670 S.W.2d 895, 900 (Mo. App. 1984). Federal courts, including the Eighth Circuit, have upheld the OTS regulations as well within the scope of the plenary authority granted by Congress under HOLA. *de la Cuesta*, 458 U.S. at 167 (OTS regulated "comprehensively the operations of these [federal savings] associations, including their lending practices"); *Casey v. FDIC*, 583 F.3d 586, 592-93 (8th Cir. 2009); *Flagg v. Yonkers Sav. & Loan Assoc.*, 396 F.3d 178, 182 (2d Cir. 2005); *Kupiec v.*

Republic Fed. Sav. & Loan Ass'n, 512 F.2d 147, 150 (7th Cir. 1975). As the HOLA made clear, federal savings associations were not to be regulated by what a particular state conceives to be the best practices. *Community Title*, 670 S.W.2d at 901; *Glendale Fed. Sav. & Loan Ass'n v. Fox*, 459 F. Supp. 903, 909 (C.D. Cal. 1978). They were, instead, to be regulated entirely by OTS regulations and orders.

OTS thus promulgated regulations that occupied the entire operations field:

> [These regulations] are promulgated pursuant to the plenary and exclusive authority of the [OTS] to regulate all aspects of the operations of Federal savings associations, as set forth in section 5(a) of the [HOLA]. *This exercise of the [OTS's] authority is preemptive of any state law purporting to address the subject of the* ***operations*** *of a Federal savings association.*

12 C.F.R. § 545.2 (emphasis added).

The OTS regulations thus gave federal savings associations maximum flexibility to exercise their powers in accordance with what has been recognized to be a uniform federal scheme of regulation that *occupied the field of regulation* of the operations of federal savings associations. *See Flagg*, 396 F.3d at 182; *WFS Fin. Inc. v. Dean*, 79 F. Supp. 2d 1024, 1027 (W.D. Wisc. 1999). *See also Wash. Mut. Bank v. Superior Court*, 95 Cal.App.4th 606, 615 (Cal. Ct. App. 2002). When federal law preempts a field, it leaves "no room for the States to supplement it." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). And, "federal regulations have no less pre-emptive effect than federal statutes." *de la Cuesta*, 458 U.S. at 153; *Casey*, 583 F.3d at 592.[2] It is also well-established that a federal agency's interpetation of its

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2 In *Community Title Co. v. Roosevelt Federal Sav. & Loan Ass'n*, 670 S.W.2d 895, 903 n. 6 (Mo. App. 1984), the court noted that – between 1982 when *de la Cuesta* was decided and 1984 when it issued its decision – the OTS regulations were only broadened. This history serves to confirm the broad preemptive effect of the OTS regulations. In early 1983, the regulations recounted that this "exercise of the Board's authority is preemptive of any state law purporting to address the subject of a Federal association's ability or right to *make, sell, purchase, participate or otherwise deal in the mortgage loan*

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own regulations is entitled to deference "unless plainly erroneous or inconsistent with the regulation." *Auer v. Robbins*, 519 U.S. 452, 462 (1997); *Casey*, 583 F.3d at 593 (finding OTS interpretation entitled to deference).[3]

Pursuant to the broad rulemaking authority granted by HOLA, the OTS in 1996 revised its regulations and promulgated 12 C.F.R. § 560.2 to declare "unequivocally"[4] that federal law occupied the field of lending regulation. *See, e.g.*, 12 C.F.R. § 560.2(a)(". . . OTS occupies the entire field of lending regulation for federal savings associations.").[5] Activities subject to lending regulation unquestionably fall within the operations of a savings association. The HOLA and OTS regulations further authorized savings associations, including Sovereign, to make, invest in, sell, purchase, or otherwise deal in residential mortgage loans. 12 C.F.R. § 560.30; 12 U.S.C. § 1464(c)(1)(B), (J).[6] And, the OTS regulations define "Loans" as meaning "obligations and extensions or advances of credit; and any reference to a loan or investment

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instruments set forth in this part, or *directly or indirectly to restrict such ability or right*." *Id.* (citing 12 C.F.R. § 545.6(a)(2)(1983))(emphasis added). The court emphasized that this provision was "broadened" by a May 23, 1983 amendment adopting 12 C.F.R. § 545.2 and stating that this "exercise of the Board's authority is preemptive of any state law purporting to address the subject of the operations of a Federal association." *Id.*

3 Because the OTS Opinions submitted by Sovereign interpret the OTS regulations consistent with the HOLA, the OTS Final Rule and the OTS regulations, such interpretations are highly relevant, notwithstanding Plaintiffs' attempt to minimize their effect (Doc. 99 at 8). These OTS Opinions confirm the broad preemptive effect of the OTS regulations set forth at 12 C.F.R. § 545.2 and § 560.2 and such interpretations should be afforded controlling weight. *Auer*, 519 U.S. at 461-62; *State Farm Bank, FSB v. Burke*, 445 F. Supp.2d 207, 216 (D. Conn. 2006).

4 *Casey v. FDIC*, 583 F.3d 586, 592 (8th Cir. 2009).

5 Section 560.2 was promulgated "[p]ursuant to sections 4(a) and 5(a) of the HOLA, 12 U.S.C. § 1463(a), § 1464(a)", *see* 12 C.F.R. § 560.2(a), *not* HOLA, § 1463(g), as contended by Plaintiffs. *Cf.* Pl. Opposition at 10.

6 Section 560.30 provides that these loans and investments are subject to exclusive oversight, regulation and orders of the OTS. 12 C.F.R. § 560.30.

includes an interest in such a loan or investment." 12 C.F.R. § 541.20 (emphasis added). Thus, the combined effect of the OTS regulations, including most notably sections 545.2 and 560.2, is to preempt the field of operations, including lending regulation, for savings associations.

B. Plaintiffs' Allegations Fall Squarely Within The Preempted Field.

The OTS has specified the relevant analysis in evaluating whether a state law is preempted under its regulations:

> ***When analyzing the status of state laws under § 560.2, the first step will be to determine whether the type of law in question is listed in paragraph (b). If so, the analysis will end there; the law is preempted.*** If the law is not covered by paragraph (b), the next question is whether the law affects lending. If it does, then, in accordance with paragraph (a), the presumption arises that the law is preempted. This presumption can be reversed only if the law can clearly be shown to fit within the confines of paragraph (c). For these purposes, paragraph (c) is intended to be interpreted narrowly. Any doubt should be resolved in favor of preemption.

OTS Final Rule, 61 Fed.Reg. 50951, 50966-67 (Sept. 30, 1996)(emphasis added).

In *Casey v. FDIC*, 583 F.3d 586 (8th Cir. 2009), the Court of Appeals for the Eighth Circuit held that this specific analysis outlined in the OTS Final Rule should be followed by district courts and concluded that "a state law that either on its face or as applied imposes requirements regarding the examples listed in §560.2(b) is preempted." *Id.* at 595. *Accord Silvas v. E*Trade Mortg. Corp.*, 514 F.3d 1001, 1005-08 (9th Cir. 2008). The relevant inquiry under *Casey* is whether the state law, on its face or as applied, imposes requirements such that it is the "type of law enumerated in § 560.2(b)." Once it is determined that the state law claim is one within the types set forth in section 560.2(b), the claim is preempted and the inquiry is over.

Casey, 583 F.3d at 596; *Silvas*, 514 F.3d at 106. *See also State Farm Bank v. Reardon*, 539 F.3d 336, 347-48 (6th Cir. 2008) (holding Ohio statute preempted by OTS regulations).[7]

Section 560.2(b) expressly preempted state laws concerning, among other things:

- the "*terms of credit*, including amortization of loans and the deferral and capitalization of interest and adjustments to the interest rate, balance, payments due, or term to maturity of the loan, including the circumstances under which a loan may be called due and payable upon the passage of time or a specified event external to the loan," 12 C.F.R. § 560.2(b)(4);

- "*Loan-related fees*, including without limitation, initial charges, late charges, prepayment penalties, servicing fees, and over limit fees," 12 C.F.R. § 560.2(b)(5);

- "Processing, origination, *servicing, sale or purchase of, or investment or participation in, mortgages*" 12 C.F.R. § 560.2(b)(10); and

- "Usury and interest rate ceilings to the extent provided in . . . 12 U.S.C. § 1463(g)," 12 C.F.R. § 560.2(b)(12).

Field preemption under HOLA and the OTS regulations is not, as Plaintiffs erroneously contend, solely limited to circumstances where savings associations make a loan. Doc. 99 at 3-6, 10. Section 560.2(b)(10) confirms that HOLA/OTS preemption expressly extends to the "***servicing, sale or purchase of, or investment or participation in, mortgages.***" 12 C.F.R. § 560.2(b)(10)(emphasis added). Servicing of mortgage loans and the sale or purchase of, and investment or participation in, mortgages are operational activities distinct from the origination or making of mortgage loans.

The inclusion of this broader language in section 560.2(b)(10) accordingly confirms that field preemption extends beyond loans made directly by the savings association to mortgage

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7 *Ayala v. World Savings Bank*, 616 F. Supp.2d 1007 (C.D. Cal. 2009), cited by Plaintiffs, applied *Silvas* and granted the defendant's motion to dismiss. The snippet of the opinion cited by Plaintiffs is *dicta* and related to a discussion of a claim for slander of title – a claim not raised here.

loans that the savings association purchased, invested or participated in, or serviced. In this fashion, the OTS has made clear its intent to preempt the entire field of operations of savings associations. *Wisconsin League of Fin. Inst. v. Galecki*, 707 F. Supp. 401, 404 (W.D. Wis. 1989)("There is nothing ambiguous about the intent of the [OTS] to preempt state laws governing the *operations* of federal savings institutions.")(emphasis added). The operations of a savings association include direct lending, indirect lending and servicing. The operations also extend to other operational activities such as automated teller machine services,[8] escrow statements[9] and the servicing of mortgages.[10] The operations of a savings association undisputedly include the purchase and servicing of mortgage loans. And, Plaintiffs make no argument to the contrary. Moreover, the phrase "lending regulation" in section 560.2(a) does not exclude activities concerning the purchase or servicing of, or investment or participation in, mortgage loans. As the OTS itself makes clear in section 560.2(b)(10), it intended to extend preemption to the state laws relating to these activities as well.

Thus, while it certainly is true that preemption extends to direct loans made by Sovereign to borrowers, Plaintiffs' premise that HOLA/OTS preemption goes no further is wrong. The OTS plainly extended preemption to the entire field of operations, including direct lending (i.e., making or originating loans), indirect lending (*i.e.*, the purchase of, or investment or participation in, loans made by other lenders), and loan servicing (*i.e.*, the collection of borrower remittances of principal and interest). These are the precise activities (purchasing and servicing of loans) that are at issue with respect to Plaintiffs' claims against Sovereign in this lawsuit. As their recent

8 *Bank of America v. City and Co. of San Francisco*, 309 F.3d 551, 560-61 (9th Cir. 2002).

9 *Galecki*, 707 F. Supp. at 404.

10 *Lopez v. World S&L Ass'n*, 130 Cal.Rptr.2d 42, 48-49 (Cal. App.2003).

citation to the *Mitchell* case makes clear, Plaintiffs are claiming that Sovereign directly violated the SMLA when it purchased certain Preferred Credit loans made to class members and when Sovereign serviced certain loans, allegedly "indirectly" charging, contracting for or receiving the challenged fees.

Indeed, Plaintiffs' claims under the Missouri Second Mortgage Loan Act ("SMLA") seek to impose liability and regulate conduct concerning: (1) Sovereign's purchase of and/or investment or participation in subordinate-lien, mortgage loans made by Preferred Credit; (2) Sovereign's alleged charging, collection and/or receipt of certain challenged loan-related fees in connection with those loans; and (3) Sovereign's alleged charging, collection and/or receipt of interest in connection with those loans. It is clear that Plaintiffs' claim that Sovereign's operations as a savings association violated the SMLA when it purchased or serviced certain loans. Doc. 120 at 4. Plaintiffs contend that the principal and interest allegedly charged or collected by Sovereign included certain "loan-related fees" financed into the loan principal as well as allegedly unlawful interest. Plaintiffs claim that Sovereign "indirectly" charged the allegedly prohibited fees and interest each time that it billed certain borrowers for principal and interest on certain class members' loans. Plaintiffs go so far as to allege that the assignee's or purchaser's purchase of the loans "enabled" Preferred Credit to make the loans. Compl. at ¶ 75.[11] Plaintiffs' SMLA claims seek to impose requirements and liability affecting the precise operations and activities described in section 560.2(b)(10), (b)(5), (b)(4) and (b)(12).

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11 Because Plaintiffs seek to hold Sovereign directly liable for violations of the SMLA based upon its purchase of, or investment or participation in, the mortgage loans, their arguments about HOEPA are a red herring. *See* Doc. 120 at 4, 5-6. There is no mention of HOEPA in Plaintiffs' Complaint, let alone any factual allegations specific to any loan allegedly purchased by Sovereign sufficient to invoke HOEPA. And, in any event, as this Court has repeatedly held, if applicable, the HOEPA assignee provision, 15 U.S.C. § 1641(d)(1), at most eliminates an otherwise applicable holder-in-due-course defense.

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And, contrary to Plaintiffs' related argument, the preemptive effect of section 560.2(b)(10) has been uniformly upheld by courts when the claims relate to the servicing or purchasing of loans made by entities that are neither banks nor savings associations. *See Quintero Family Trust v. One West Bank, F.S.B.*, 2010 WL 2618729, *6-7 (S.D. Cal. 2010)(dismissing state law claims against savings association as preempted under §560.2(b)(10) even though mortgage loan was made by Clarion Mortgage, a non-bank, non-savings association); *Odinma v. Aurora Loan Services*, 2010 WL 1199886 , *7-8 (N.D. Cal. 2010) (dismissing state law claims against savings association as preempted under §560.2(b)(10) even though mortgage loan was made by MortgageIT, a non-bank, non-savings association); *McKenzie v. Ocwen Federal Bank, FSB*, Case No. CAL03-18977 (Cir. Ct. Prince George's Cty, Md. 2004)(attached as Ex. 2 to Sovereign's Opening Suggestions) (dismissing claims against savings association as preempted under §560.2(b)(10) even though mortgage loan was made by George Crockett, a non-bank, non-savings association).[12] Each of these cases and the earlier

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Gilmor v. Preferred Credit Corp., No. 01-0928-CV-W-SOW, slip op. at 2 (W.D. Mo. Nov. 19, 2001)("Section 164(d) is not an independent basis for liability, but rather a limitation of the common law holder-in-due-course rule"); *Baker v. Century Financial Group*, No. 01-0903-CV, 2001 U.S. Dist. Lexis 24320, at *7 (W.D. Mo. Nov. 19, 2001)(Wright, J.); *Schwartz v. Bann-Cor*, No. 01-0980-CV-W-6, slip op. at 4 (W.D. Mo. Oct. 22, 2001)(Sachs, J.)("Section 1641(d) is not an independent basis of liability, but merely a limitation of the common law holder in due course rule."). This earlier holding, which Plaintiffs advocated for, is the law of this case and they cannot now argue for a broader interpretation of HOEPA. Nothing in *Thomas* went beyond reciting the language of section 1641(d)(1). And, the Eighth Circuit did not decide any issues concerning the scope of HOLA or OTS preemption in *Thomas* because no such issues were before the court. Likewise, there was no HOLA or OTS preemption issue raised in *Mitchell v. Residential Funding Corp.*, 2010 WL 4720755 (Mo. App. Nov. 23, 2010). None of the defendants in *Mitchell* was a savings association. If anything, Plaintiffs' citation to *Mitchell* merely confirms that they seek to regulate the operations of savings associations, contrary to the express language of the HOLA and OTS regulations.

12 *McKenzie* interpreted the HOLA and relevant OTS regulations and therefore is persuasive authority concerning the preemptive effect of section 560.(b)(10). Unlike *McKenzie*, the cases cited by Plaintiffs regarding the National Bank Act did not purport

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cited cases applied the OTS regulations by their express terms and upheld the field preemption of the OTS regulations as intended by Congress and the OTS. *See* Sovereign's Opening Suggestions at 4-6. *See also* Doc. 99 at 8 (acknowledging courts found claims preempted under the language of the HOLA and OTS regulations). Accordingly, under *Casey* and the analytical approach set forth in the OTS's Final Rule, the state law is preempted.

C. Plaintiffs Fail To Address The Key Language of the OTS Regulations And Fail To Offer Any Persuasive Authority To The Contrary.

Faced with *Casey, Community Title,* the OTS regulations and the OTS Final Rule, the only remotely relevant decision Plaintiffs cite is an unpublished, summary order from a state court denying a motion to dismiss in Clay County filed by a different entity. Doc. 99 at 4 *citing* *Baker v. Century Financial Group*, No. 04-0201 (Mo. Cir. Ct. Aug. 9, 2006)). The order is neither binding nor persuasive. The cited order in *Baker* was not accompanied by any written opinion, offered no persuasive reasoning and plainly did not have the benefit of the 2009 *Casey* decision.[13]

Plaintiffs' assertion that there is a presumption against preemption in this context is also mistaken. Doc. 99 at 11. *Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996), the case cited by Plaintiffs, is a conflict preemption case that contains no discussion of field preemption, the HOLA or OTS regulations or any other federal banking law. Sovereign does not depend on conflict preemption here. Instead, in this context: "[B]ecause there

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to address the relevant aspects of the HOLA or the OTS regulations raised here. Likewise, the *Schwartz* case plainly did not address HOLA or the OTS regulations at all, again because none of the defendants in that case was a savings association and the issue was not before the court.

13 The moving party in *Baker* also appears to have overlooked the *Community Title* decision from the Missouri Court of Appeals.

has been a history of significant federal presence in national banking, the presumption against preemption of state law is inapplicable." *Bank of America*, 309 F.3d at 559 (noting history of Congressional legislation in banking field dating to "days of *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 325-26, 426-27 (1819), and citing *United States v. Locke*, 529 U.S. 89, 108 (2000)); *Silvas*, 514 F.3d at 1005. That is why the Eighth Circuit has directed courts to follow and defer to the OTS's analytical framework. *Casey*, 583 F.3d at 593-96. And, that OTS framework provides that the presumption is *in favor of preemption* as well. OTS Final Rule, 61 Fed.Reg. 50951, 50966-67 (Sept. 30, 1996).

Equally mistaken is Plaintiffs' contention that preemption under the National Bank Act is co-extensive with field preemption under the HOLA. Doc. 99 at 4-5, citing remand decisions in *Thomas*, *Gilmor*, *Baker* and *Schwartz*; *see also* Doc. 120 at 6-7. While the interest-exportation and most-favored-lender preemption principles are similar under the National Bank Act and the HOLA because, among other things, both statutes apply the same federal definition of "interest", Plaintiffs ignore the well-established fact that the HOLA and OTS regulations preempt the entire field of operations for savings associations.[14] *By contrast*, the National Bank Act and related OCC regulations do *not* preempt the field of operations for national banks. Preemption under the National Bank Act is analyzed under the doctrine of conflict preemption rather than the broader concept

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14 None of these prior remand decisions involved the HOLA or OTS regulations. Plaintiffs' reference to "complete" preemption for jurisdictional purposes is likewise a classic straw man argument. Doc. 99 at 16 n. 10. Plaintiffs admit that Sovereign made no such argument. They then refute the non-existent argument. That Sovereign did not remove this case based on the concept of complete preemption is entirely beside the point as to whether Plaintiffs' claims are within the preempted field of operations.

of field preemption. *Munoz v. Financial Freedom Senior Funding Corp.*, 567 F. Supp.2d 1156, 1162 (C.D. Cal. 2008) (emphasizing that HOLA/OTS preemption occupies the field and is broader than National Bank Act preemption which implicates conflict preemption).[15] And, most importantly, none of the cited remand cases addressed 12 C.F.R. § 545.2 or § 560.2 or any similar field preemptive regulation, let alone one that expressly preempts state laws affecting the relevant loan purchasing, investment and servicing operations. Nor did any of their cited cases address the Eighth Circuit's decision in *Casey* or the Court of Appeals' decision in *Community Title*.

Garrison v. First Federal Sav. And Loan Ass'n of So. Carolina, 402 S.E.2d 25 (Va. 1991), likewise did *not* address 12 C.F.R. § 560.2 because the OTS's specific field preemptive regulation was not promulgated until 1996 – approximately five years *after* the decision was rendered. Therefore, this foreign decision does nothing to undermine the preemptive force of sections 545.2 and 560.2, the Eighth Circuit's holding in *Casey* or the analytical framework articulated by the OTS in its Final Rule.[16] The Eighth Circuit's decision in *Flanagan v. Germania, F.A.*, 872 F.2d 231 (8th Cir. 1989), also did *not* address 12 C.F.R. § 560.2 because that decision was rendered approximately seven years prior to the issuance of the OTS regulation. It was likely for this reason that the Eighth Circuit in *Casey* does not mention *Flanagan* when it expressly addressed the preemptive scope and effect of section 560.2.

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15 *Ament v. PNC Nat. Bank*, 849 F. Supp. 1015, 1021 (W.D. Pa. 1994), and *Gavey Properties/762 v. First Financial Sav. & Loan Ass'n*, 845 F.2d 519, 521 (5th Cir. 1988), *see* Doc. 99 at 7, do not hold otherwise and neither case addresses the field preemptive regulations at 12 C.F.R. § 545.2 and § 560.2.

16 Plaintiffs' suggestion (Doc. 99 at 10) that *Garrison* addressed section 560.2 in any way is, at best, mistaken.

In short, this Court should not follow the inapposite cases cited by Plaintiffs that do not address HOLA, the key OTS regulations or the Eighth Circuit's directive in *Casey*. Rather, this Court should adhere to relevant Eighth Circuit precedent and apply the OTS regulations as intended by Congress and the OTS.

For all of these reasons, the Court should grant Sovereign's Motion to Dismiss Based on HOLA Preemption and dismiss Plaintiffs' Complaint with prejudice as to Sovereign.

Respectfully submitted,

By: /s/ *Randolph G. Willis*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document was filed electronically with the Clerk of the United States District Court for the Western District of Missouri, Western Division, this 17th day of December, 2010, with notice of case activity to be generated and sent electronically to all designated persons.

/s/ *Randolph G. Willis*
An Attorney for Sovereign Bank